MALAYSIA BORNEO FINANCE CORP. (M) BHD. *a*

v.

LEE MOTOR ALOR SETAR (CAR DIV.) SDN. BHD.

HIGH COURT MALAYA, ALOR SETAR
K.C.VOHRAH J
[CIVIL APPEAL NO. 12-21-1986] *b*
20 APRIL 1989

HIRE PURCHASE: *Hire purchase agreement - Relationship between hire-purchase company and dealer not as principal and agent but as principals equally - Title - Ownership passed to hire-purchase company upon sale - Liability not against dealer but against hirer - Dealer's breach of express requirement "hirers to sign hire-purchase agreement at dealer's company office" - Waiver - (estopped).* *c*

CIVIL PROCEDURE: *Pleadings - Imprecise and unclear - Fraud - Misrepresentation - Forgery - Appeal from Sessions Court.*

The plaintiff claimed the sum of RM10,000 being the sum paid by the plaintiff to the defendant for a car in anticipation of a hire-purchase agreement being completed between the plaintiff and the defendant. The plaintiff alleged, it would seem, that the defendant as agent contravened an express requirement that hirers are to sign the hire-purchase agreement at the defendant's office. The statement of claim was imprecise and unclear. It appeared to show that the hirer did not sign the hire-purchase agreement and that the hirer's signature was probably forged. Court of 1st instance dismissed the plaintiff's claim finding no evidence of fraud. The plaintiff appealed: *d* *e*

Held:

[1] There was no relationship of principal and agent between the plaintiff and the defendant. The car was bought by the plaintiff from the defendant both acting as principals. Upon the sale, ownership in the said car passed from the defendant to the plaintiff. The plaintiff's remedy lies against the hirer and not against the defendant. *f*

[2] The statement of claim was imprecise and unclear. It was not pleaded by the plaintiff that the hirer did not execute the hire-purchase agreement. The statement of claim was unclear as to the allegation of fraud. The hire-purchase agreement itself bore the signature of the hirer. No evidence was adduced that the signature of the hirer was a forgery. Inconsistent evidence that hirer had paid 2 instalments under the hire-purchase agreement.

[3] The plaintiff in choosing to ignore non-compliance of the "condition precedent" i.e. that a hire-purchase agreement to be signed by hirer at the defendant company's office, may not thereafter complain of non-compliance with the said condition precedent. *g*

Cases referred to:

Mercantile Credit co. v Hamblin [1964] 3 All ER 592 *h*

For the appellant - Visvanathan; M/s Syarikat visva
For the respondent - anthonysamy; M/s Aziz, Anthony & Co. Mercantile Credit Co. v Hamblin [1964] 3 All ER 592

i

JUDGMENT

K.C. Vohrah J:

This is an appeal against the decision of the Judge of Sessions Court, Sungei Petani. The defendant company, dealers in cars, had sold a car for RM10,000 to the plaintiff company, financiers in respect of the same car which had been handed over to one Zainon in anticipation of a hire-purchase agreement being completed between the plaintiff company and Zainon. The agreement was entered into and Zainon made two payments and defaulted on the rest.

It appears to be pleaded that Zainon had bought the car for cash from a third party, a fact which it is alleged that the plaintiff company was not aware of when they agreed to buy the car from the defendant company for the purpose of the hire-purchase transaction with Zainon; that Zainon had paid cash for the car to one Grant Motor Company and that Zainon did not sign the hire-purchase agreement and that the signature of Zainon on the hire purchase agreement was probably forged.

It is, however, not clear from the statement of claim what the cause of action is all about and the evidence adduced was far from helpful in defining what the issues are. The learned Judge went on the basis that the case was predicated on fraud perpetrated by the defendant. He found no evidence of fraud and he dismissed the plaintiff company's claim.

Now for the facts. In December 1982 the defendant company sold a Honda Civic car to the plaintiff company in respect of a prospective hirer, Zainon bin Man. The plaintiff company paid RM10,000 for the purchase of the car. And the plaintiff company entered into a hire purchase agreement as required under the provisions of the Hire Purchase Act 1967 with the hirer, Zainon bin Man.

The facts adduced on behalf of the plaintiff company show that Zainon made 2 successive instalment payments for the car under the hire-purchase agreement and then he defaulted in his other payments. The plaintiff company (according to para. 5 of the statement of claim) then filed a civil action against the said Zainon but it is not clear what the nature of the civil action is or what has happened to that civil action since.

The plaintiff company then filed a civil action in the Sessions Court at Sungei Petani against the defendant company. The plaintiff company wish to recover the RM10,000 they paid to the defendant company for the said car.

As I have stated before, it is not clear what grounds have been relied on by the plaintiff to recover the 410,000. Their pleadings are hardly precise and the evidence adduced on their behalf hardly helps in narrowing the issue.

In further clarification of the facts the evidence shows that in December 1982 the defendant company in Alor Setar through another dealer in cars, Grant Motors Trade at Sungei Petani, found a prospective hirer, Zainon, for a Honda Civic car. The defendant company received from Grant Motor Trade particulars relating to Zainon and a proposed hire-purchase agreement bearing the signature "Zainon" as hirer and the signature of one Ng Chuan Hin who purportedly witnessed this Zainon sign the agreement. The proposed hire-purchase agreement was a standard printed from of the plaintiff company bearing the name of the plaintiff company as the proposed other contracting party.

The defendant company then sent this proposed hire-purchase agreement to the plaintiff company and with it was an invoice. Also sent was a photostat copy of the registration book of the car showing the car as having been registered in the name of Zainon bin Man with an endorsement that the title to the car was claimed by the plaintiff's company, Malaysia Borneo Finance Bhd. ("Hak Milik Dituntut Oleh Malaysia Borneo Finance Bhd.")

The invoice states that on 3 December 1982 a Honda Civic Saloon was sold to the plaintiff thus:

> Sold to: Malaysia Borneo Finance Corporation (M) Berhad.
>
> A/C : Encik Zainon bin Man of 566, Jalan Perak, Kepala Batas, Pulau Pinang.

The invoice contains particulars relating to the description of the vehicle and its retail price.

Under the "Remarks" column in the invoice is written "Vehicle sold by Grant Motor Trade, Sungei Petani."

The plaintiff company bought the said car. PW1, the hire purchase officer of the plaintiff company, said that the plaintiff company, on being satisfied with the authenticity of the signature of Zainon, and on the strength of the invoice, paid the defendant company RM10,000 as the purchase price of the car.

As was stated earlier the hirer, Zainon, paid 2 instalments under the hire-purchase agreement and defaulted on the rest. PW1 said so. He said that Zainon in March 1983 went to the plaintiff company's office "with a receipt to the effect that he bought the car from Grant Motor". Zainon told him (PW1) that he had bought the car for RM17,000 cash and that he had lodged a police report on the matter.

So the situation now is that the plaintiff company wish to recover the purchase price of RM10,000 from the defendant company who sold the car to them. And the basis of this claim?

I now come to the pleadings of the plaintiff company. It was not pleaded by the plaintiff company that Zainon did not execute the agreement; instead the pleadings (para. 3 of the statement of claim) are that Zainon had lodged a police report alleging that he had bought the car from Grant Motor Trading Co. for cash and that he did not sign the agreement. What is the issue? Are the pleadings that the agreement was not signed by Zainon? And that the defendant company had misrepresented to the plaintiff company that it was signed by Zainon? To make matters less clear the plaintiff company in para. 6 and 7 of the statement of claim plead:

> ... the said Zainon bin Man lodged a police report alleging that he bought the said motor car from Grant Motor Trade for cash and that he did not sign any hire-purchase agreement with the plaintiff.

It will be seen that the plaintiff did not plead that the agreement was not signed by Zainon, only that Zainon alleged he did not sign any hire purchase agreement.

To further confuse the issue, para. 7 of the statement of claim states:

> The plaintiff then informed the defendant that the hire-purchase agreement submitted by it was probably forged and that the defendant's agent Grant Motor Trade had probably absconded with RM10,000 of the purchase price paid by the said Zainon bin Man.

Is fraud alleged against the defendant?

In the Court below there was considerable confusion as to whether misrepresentation and fraud formed the basis of the plaintiff's claim; whether the defendant misrepresentation to the plaintiff that the hire-purchase agreement had been entered into by Zainon when it had not been so entered and as a result of which the plaintiff agreed to purchase the said car from the defendant for sale to Zainon.

If misrepresentation is the basis then there is absolutely no evidence. There is no evidence adduced by the plaintiff company that Zainon did not enter into the agreement, that he did not sign the hire-purchase agreement. The document bears the signature "Zainon" and has the signature of a witness and neither Zainon nor the witness was called to testify that the agreement was not executed by Zainon. No evidence was adduced that the signature of Zainon was a forgery. In any event it was the evidence of PW1, the hire-purchase officer of the plaintiff company, that Zainon did make 2 instalment payments under the agreement; why then did Zainon make such payments if there was no valid agreement subsisting?

As for fraud there is not an iota of evidence adduced to that effect. Thus the learned Judge who felt the basis of the claim was fraud was quite right in rejecting the allegation of fraud.

The plaintiff company's Counsel, however, states that his claim was not based on fraud but on contract and agency. If I understand him correctly, although this was not made clear in the pleadings nor in the Court below, what he means is that when the plaintiff company bought the car from the defendant company for RM10,000 in order to facilitate a hire-purchase arrangement with Zainon in respect of the car, the plaintiff company did so in the belief that the defendant company acting as their agents for the hire-purchase arrangement with the hirer had complied with certain documentation procedures relating to the introduction of Zainon to the plaintiff as a prospective hirer. They allege that the defendant had failed to comply with some aspects of the procedure; and relying on some representations in the documents sent by their agents, the defendant company, they were misled to pay RM10,000 for the purchase of the car from the defendant company.

The evidence shows that in 1978 Development Credit Leading Sendirian Bhd. (the former name of the plaintiff company) wrote to the defendant company a letter (A2) concerning the hire purchase financing of cars thus:

> Dear Sir,
>
> Re: Honda Civic Financing - New Car Hire Purchase
>
> We refer you to our discussion on the above subject. Please be advised that for the time being the acceptance of hire-purchase is only for Honda Civic Car only. Until suitable time then only will we accept other makes of motor vehicles, which you are not sub-distributor of that area.
>
> However, we would like to draw your attention to the following points concerning the hire purchase financing of car:
>
> 1. ...
>
> 2. ...
>
> 3. ...
>
> 4. ...
>
> 5. Documentation - hirers are to sign hire purchase agreements and all other relevant documents as directed by us and to be completed at your office. MBF Ownership Claim must be lodged with the Registrar and Inspector of Motor Vehicles. (RIMV)

6. Payment - payment will be released direct to you by MBF Penang upon completion and satisfaction of all legal and security documents.

7. ...

It is not disputed that the defendant company received this letter. But I do not understand the argument of Counsel for the plaintiff company before the Court below in relation to this letter. He said that the defendant company were agents of the plaintiff company; it was their duty to introduce customers to the plaintiff company's customers; and it was their duty as agents to "verify the customers". It was argued that "on the strength of the documents submitted by the defendant company and on consideration of that the money was released".

There is considerable confusion as to what Counsel intended to convey. Perhaps it is apposite to quote the law relating to agency in a hire purchase transaction as stated by Pearson LJ in *Mercantile Credit Co. v. Hamblin* [1964] 3 All ER 592 at pp. 600 & 601.

> There is no rule of law that in a hire-purchase transaction the dealer never is, or always is, acting as agent for the finance company or as agent for the customer. In a typical hire-purchase transaction the dealer is a party in his own behalf and not as general agent for either of the other two parties. There is no need to attribute to him an agency in order to account for his participation in the transaction. Nevertheless the dealer is to some extent an intermediary between the customer and the finance company, and he may well have in a particular case some ad hoc agencies to do particular things on behalf of one or the other or it may be both of those two parties.

In so far as the sale transaction relating to the car between the plaintiff company and the defendant company is concerned I can see no relationship of principal and agent; the car was bought by the plaintiff company from the defendant company, both parties acting as principals. The car belonged to the defendant company and ownership passed to the plaintiff company. The purchase money for the car was paid to the defendant company in their own right. As for the hire-purchase agreement, Zainon took the car under that agreement made between him and the plaintiff company. What then is the claim of the plaintiff company against the defendant company based on agency? To my mind there is none. The learned Judge of the Sessions Court though he touched on the matter of agency raised by plaintiff company's Counsel made a general finding that the defendant company were not agents of the plaintiff company and he left the matter at that. As far as I can see the sale of the car by the defendant company to the plaintiff company being a transaction between principals, there is no relevance in the argument that the defendant company being the agents of the plaintiff company therefore it was their "duty to verify the customers".

I leave the matter of agency and turn to what I think is the relevant issue.

Was the defendant company as principal under an obligation to fulfil a condition precedent before selling the car to the plaintiff company, another principal? Did they have to make sure that the hire-purchase agreement had to be signed by Zainon in their premises. The manager of the defendant company freely admitted that it was not signed in their premises although all the other particulars in the invoice were entered in it in their premises - it was their agent, Grant Motor Trade, in Sungei Petani which made the transaction. Did this contravene para. 5 of the letter which the plaintiff company sent to the defendant that states, "hirers are to sign hire-purchase agreements and all other relevant documents as directed by us and to be completed at your office?" To my mind the answer is in the negative. The said invoice which the defendant company sent to the plaintiff company clearly mentions in the remarks column that the vehicle was "sold by Grant Motor Trade, Sungei Petani". And it was the evidence of the hire-purchase officer (PW1) of the plaintiff company that the plaintiff

company paid the defendant company RM10,000 on the strength of this invoice. Although he said, "I only knew the car had been sold to Grant Motor when the hirer came to us with a receipt saying he bought the car from Grant Motors" this statement therefore cannot be true.

My view is that it was clearly disclosed by the defendant company to the plaintiff company that the car to be sold to them had a prospective hirer in a transaction handled by a Sungei Petani company. And the plaintiff company had chosen to ignore this non-compliance with the condition precedent, if it can be considered one at all, that the agreement should have been signed in the premises of the defendant company when they purchased the car. How can they now complain that there was non-compliance with a condition precedent? There is no merit in their claim. In any event it is not as though that the defendant company are now the registered owners of the car or that they have the possession of the said car and have refused to hand over the car to the plaintiff and as a result the plaintiff company want a refund of the purchase price from them. The point is that the legal ownership of the car remains with the plaintiff company though it seems obvious they do not have possession of it. Their remedy is against Zainon not the defendant company.

Accordingly I dismiss the appeal of the plaintiff company against the learned President's decision dismissing their claim. And I dismiss it with costs.

Also found at [1989] 2 CLJ 1223